SAVE OUR ECOSYSTEMS, INC., ET AL.

IBLA 83-457 Decided March 15, 1985

Appeal from a decision of the Eugene District Office, Bureau of Land Management, rejecting appellants' protest to the adoption of the 1983 right-of-way treatment program. ORO 90-3-1.

Dismissed.

1. Appeals -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Standing to Appeal

Where, on appeal from a denial of a protest, an appellant fails to make any showing as to how its interests are adversely affected by the denial of the protest, and none is apparent, such an appellant will be deemed to lack standing, and the appeal will be dismissed.

APPEARANCES: Michael Slattery, Eugene, Oregon, for appellants; Eugene A. Briggs, Esq., Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Save Our ecoSystems, Inc., and Citizens for Alternatives to Toxic Sprays have appealed from a decision of the Eugene District Office, Bureau of Land Management (BLM), dated March 14, 1983, which denied their protest to the adoption of the Eugene District's 1983 right-of-way treatment program. We dismiss.

Initially, we would note that this appeal involves two specific questions relating to the 1983 program: (1) utilization of herbicides to control brush encroachment on 96 acres 1/ and (2) use of mechanical means to accomplish brush cutting on an additional 625 acres. We will treat these issues separately.

1/ Appellants, in their statement of reasons for appeal, referenced an earlier statement of reasons in a different appeal and stated that they "incorporate those arguments herein by reference." No copy of this prior statement was submitted with this appeal, however. All parties are hereby expressly advised that this is not acceptable procedure.

Absent the entry by this Board of an order consolidating multiple appeals, each party is required to submit a complete set of documents for each appeal. Cases are assigned on a rotating basis to different panels of

The 96 acres scheduled to be sprayed with herbicides involved application of herbicides not by BLM but by Lane County (86 acres), the Oregon Department of Highways (5 acres), and the Weyerhauser Company (5 acres). During the pendency of this appeal, however, the issue of spraying herbicides on BLM lands has been the subject of considerable judicial examination, most notably in Save Our ecoSystems v. Clark, 747 F.2d 1240 (9th Cir. 1984), and Southern Oregon Citizens Against Toxic Sprays, Inc. v. Clark, 720 F.2d 1475 (9th Cir.), cert. denied, 105 S. Ct. 446 (1984). As a result of these decisions the spraying of herbicides on BLM lands within the Ninth Circuit has been enjoined pending the preparation of a worst case analysis (WCA). Pursuant thereto, Instruction Memorandum No. 85-238 (Feb. 1, 1985) banned herbicide spraying in Oregon on all BLM lands until an environmental impact statement containing a WCA was completed. Insofar as herbicide spraying is concerned, the issues raised in this appeal are clearly moot. 2/ See also Save Our ecoSystems, Inc., 84 IBLA 82 (1984).

[1] With respect to the 625 acres for which BLM has authorized mechanical brushcutting, we note that appellants have totally failed to establish their standing to appeal this issue. Appellants merely contend that their membership includes "persons who live close to BLM rights-of-way or who use the rights-of-way and adjacent areas for multiple use" (Statement of Reasons at 1). While this allegation might establish a nexus between appellants and the lands involved, there is no indication as to how appellants are adversely affected by the decision to employ mechanical brushcutters along established rights-of-way.

Unlike the situation surrounding application of herbicides, where fears of toxicity and residual pollution can be readily seen as providing a basis for the assertion of an adverse impact, it is difficult to ascertain how mechanical brushcutting on established rights-of-way adversely affects any interest of appellants. In any event, no plausible theory has been advanced by appellants and we decline to indulge in pure speculation as to the basis of their concern.

As the Board has noted on numerous occasions, under 43 CFR 4.410, there are two prerequisites to the invocation of the Board's jurisdiction: (1) that

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fn. 1 (continued)
the Board and it is not unusual for totally different panels to be assigned similar appeals. In point of fact, not a single Judge in the instant case was a member of the panel which decided the appeal which appellants referenced. The net result of appellants' approach is that the Board must expend its time copying these documents or making other arrangements to review the referenced filings. We will not, in the future, allow any party to shift clerical responsibility from itself to the Board.

If a party wishes to incorporate by reference previously filed documents, it must provide this Board with a copy of those documents. Where this is not done, the Board will disregard such arguments.

2/ We recognize that Lane County has asserted that BLM has no jurisdiction over the county roads (a position with which BLM disagrees). However, insofar as the 1983 calendar year is concerned, not only is this issue moot, but counsel for BLM has informed the Board that Lane County has indefinitely suspended the spraying of herbicides along county roads.

an appellant was a party to the case, and (2) that the appellant was adversely affected by the decision below. See Oregon Natural Resources Council, 78 IBLA 124, 125 (1984); In re Pacific Coast Molybdenum Co., 68 IBLA 325 (1982). The denial of appellants' protest is sufficient to make them "a party to the case." See In re Pacific Coast Molybdenum, supra. But, in addition to this showing, they must also show that they have been adversely affected by the decision appealed from. See Phelps Dodge Corp., 72 IBLA 226 (1983). In the absence of such a showing, an appeal must be dismissed. Id.

The mere fact that appellants had standing to appeal from the decision below to the extent that it authorized the application of herbicides does not, ipso facto, grant them standing to appeal every other element of that decision. Rather, an appellant must make a showing of injury in fact on each specific matter for which it seeks review. See generally Benton C. Cavin, 83 IBLA 107 (1984). This, appellants have clearly not done.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

James L. Burski
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Franklin D. Arness
Administrative Judge